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No. 03-1625

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

JAMES GARDNER, JR.,

Petitioner,

vs.

HEARTLAND EXPRESS, INC.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Iowa

REPLY BRIEF TO BRIEF IN OPPOSITION

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QUESTION PRESENTED

I. Whether an injured worker's constitutional right of due process is violated when a statutory amendment limiting benefits available to non-residents of Iowa, enacted after the worker's claim for workers' compensation benefits accrued and vested, is applied retroactively to dismiss the non-resident worker's claim on jurisdictional grounds?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Contents	ii
Table of Authorities	iii
Argument	1
I. Gardner's workers' compensation claim was a vested property right as of the date of his injury in 1993, and the retroactive application of the subsequent 1997 "jurisdictional" amendment to completely deprive him of his cause of action violated his substantive due process rights	1
II. Whether Gardner had a concurrent claim for workers' compensation benefits under Georgia law is irrelevant to determining whether he was deprived of his vested cause of action under Iowa law in violation of his substantive due process rights	5
CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

American Manufacturers Mutual Ins. Co. v. Sullivan, 526 U.S. 40, 119 S. Ct. 977, 142 L. Ed. 2d 130 (1999) 1, 2, 3, 4

Auxier v. Woodward State Hosp. Sch., 266 N.W.2d 139 (Iowa 1978) 2

Dolezal v. Bockes, 602 N.W.2d 348 (Iowa 1999) 4

Gibbes v. Zimmerman, 290 U.S. 326, 54 S. Ct. 140 (1933) 4

Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982) 4

McIlravy v. North River Ins. Co., 653 N.W.2d 323 (Iowa 2002) 2

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996) 2

Thorp v. Casey's Gen. Stores, Inc., 446 N.W.2d 457 (Iowa 1989) 4

Tulsa Professional Collection Services v. Pope, 485 U.S. 478, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988) 4

STATUTES

Iowa Code § 85.27 (2003) 2

Iowa Code § 85.32 (2003) 2

Iowa Code § 85.33 (2003) 2

Iowa Code § 85.34(1) (2003) 2

Iowa Code § 85.36 (2003) 2

TABLE OF AUTHORITIES – Continued

Page

Iowa Code § 85.72 (2003) 6

Iowa Code § 86.13 (2003) 2

ARGUMENT

I. Gardner's workers' compensation claim was a vested property right as of the date of his injury in 1993, and the retroactive application of the subsequent 1997 "jurisdictional" amendment to completely deprive him of his cause of action violated his substantive due process rights.

Heartland's primary argument on the due process issue is to claim that "Gardner had no vested property right at the time the 1997 amendment went into effect. Thus, no due process analysis is necessary." (Brief in Opposition, p. 8). Heartland's argument rests solely on its misplaced analysis of one case, *American Manufacturers Mutual Ins. Co. v. Sullivan*, 526 U.S. 40, 119 S. Ct. 977, 142 L. Ed. 2d 130 (1999).

In *American Manufacturers*, this Court considered whether Pennsylvania workers' compensation law violated *procedural* due process[1] by instituting a particular method for reviewing medical bills related to treatment received by injured workers. *Id.*, 526 U.S. at 58-61, 119 S. Ct. at 989-90. In analyzing Pennsylvania law, this Court found that no property right attached until the injured worker established both the employer's liability for a work-related injury, and that the medical treatment in dispute was

[1] Gardner is asserting a *substantive* due process claim. The threshold question of whether workers' compensation claims are property rights subject to due process protection, of course, would be identical under either analytical approach. As will be discussed in this section, this Court recognized in *American Manufacturers* that workers' compensation claims can rise to the level of protected property rights subject to due process analysis.

reasonable and necessary. *Id.*, 526 U.S. at 60-61, 119 S. Ct. at 990.

Iowa law, however, is different. Injured workers who are unable to work are entitled to healing period or temporary disability benefits beginning on either the first or fourth day of disability, depending upon the circumstances. Iowa Code § 85.34(1) (healing period benefits begin on the first day of disability); Iowa Code §§ 85.32, 85.33 (temporary disability benefits begin on the fourth day of disability). The amount of compensation paid for disability (temporary and permanent) is governed by the worker's earnings as of the date of the injury. Iowa Code § 85.36. Further, injured workers are entitled to medical treatment from the moment of their injury. Iowa Code § 85.27.

Additionally, under Iowa law, if an employer fails to promptly commence payment of disability benefits within a reasonable time after the injury, statutory penalty benefits can be awarded. Iowa Code § 86.13; *Meyers v. Holiday Express Corp.*, 557 N.W.2d 502, 504 (Iowa 1996) (summarizing Iowa penalty benefit law). Further, Iowa recognizes a common law tort for "bad faith" denial of workers' compensation benefits. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323 (Iowa 2002) (extensive discussion of Iowa bad faith law in workers' compensation claims).

Finally, as was noted in Gardner's Petition, Iowa law has expressly held that workers' compensation benefits are protected property rights subject to due process protection, *even prior to the filing of any petition*. *Auxier v. Woodward State Hosp. Sch.*, 266 N.W.2d 139, 140-42 (Iowa 1978).

In addition to the legal differences between Iowa and Pennsylvania law, one important factual distinction must

be noted. In the present case, Heartland expressly *admitted liability* at time of hearing, and in fact had previously provided extensive workers' compensation disability and medical benefits. (Pet. for Writ of Cert. App., p. 61). Unlike *American Manufacturers*, in the present case, Gardner was clearly entitled to benefits from the date of his injury – the only question was the extent of his entitlement.

American Manufacturers actually reinforces Gardner's contention that his vested cause of action was a Constitutionally protected property right. Four justices specifically noted that workers' compensation claims are protected by due process. As Justice Stevens stated:

> That right [to workers' compensation benefits] – whether described as a "claim" for payment or a "cause of action" – is unquestionably a species of property protected by the Due Process Clause of the Fourteenth Amendment.

American Manufacturers, 526 U.S. at 65, 119 S. Ct. at 991. (Stevens, J., concurring in part and dissenting in part).

Similarly, Justice Ginsburg stated:

> I do not doubt, however, that due process requires fair procedures for the adjudication of respondents' claims for workers' compensation benefits, including medical care.

Id., 526 U.S. at 62, 119 S. Ct. at 991. (Ginsburg, J., concurring).

Finally, Justice Breyer, joined by Justice Souter, observed:

> [T]here may be individual circumstances in which the receipt of earlier payments leads an

> injured person reasonably to expect their continuation, in which case that person may well possess a constitutionally protected "property" interest.

Id., 526 U.S. at 63, 119 S. Ct. at 991. (Breyer, J., concurring).

These observations in *American Manufacturers* reflect this Court's explicit recognition that a legal cause of action is a property right protected by due process. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-29, 102 S. Ct. 1148, 1154, 71 L. Ed. 2d 265, ___ (1982) ("a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause."); *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 486, 108 S. Ct. 1340, 1345, 99 L. Ed. 2d 565, ___ (1988) ("Appellant's interest is an unsecured claim, a cause of action against the estate for an unpaid bill. Little doubt remains that such an intangible interest is property protected by the Fourteenth Amendment."); *Gibbes v. Zimmerman*, 290 U.S. 326, 332, 54 S. Ct. 140, 142 (1933) ("a vested cause of action is property and is protected from arbitrary interference").

As noted in Gardner's Petition, Iowa law also has explicitly recognized that a cause of action is a property right protected by due process. *Thorp v. Casey's Gen. Stores, Inc.*, 446 N.W.2d 457, 461 (Iowa 1989); *Dolezal v. Bockes*, 602 N.W.2d 348, 351 (Iowa 1999). In the present case, there is no doubt that Gardner had a vested property right in his cause of action for workers' compensation benefits as of the date of his injury. Any statutory amendment that deprives him of this property right must be subjected to substantive due process analysis.

II. Whether Gardner had a concurrent claim for workers' compensation benefits under Georgia law is irrelevant to determining whether he was deprived of his vested cause of action under Iowa law in violation of his substantive due process rights.

Heartland echoes the Iowa supreme court's curious pronouncement that, because Gardner may have had a claim for workers' compensation benefits under Georgia law, his claim for similar benefits under Iowa law may be stricken, literally at will, by the Iowa legislature. This argument, however, is the logical equivalent of saying that a state civil rights statute that gives broader protections and remedies than corresponding federal statutes can be repealed and pending claims dismissed because the claimants would still have a lesser remedy available under federal law, an obviously absurd result.

Heartland, like the Iowa supreme court, seems to mistakenly confuse Gardner's independent rights under two separate statutes with the issue of finding the proper venue for one claim. Here, Gardner had the right to pursue a claim under Iowa law at the time of his injury; in fact, Heartland chose to administer his claim under Iowa law. The Iowa workers' compensation commissioner had the sole authority to grant benefits under Iowa law, and certainly had no authority to grant benefits under Georgia law. Similarly, the Georgia workers' compensation system could only award benefits under Georgia law, and not under Iowa law. Consequently, Gardner's only forum for his Iowa workers' compensation claim was before the Iowa workers' compensation commissioner. The 1997 amendment, as applied retroactively to Gardner's claim, meant

Gardner had no forum for pursuing his Iowa claim, and in fact meant he no longer had an Iowa claim.

As noted in Gardner's Petition, Iowa law provides better workers' compensation benefits than does Georgia law, including higher weekly disability benefits, longer periods of temporary and permanent disability benefits, and lifetime medical benefits. *Iowa law also explicitly prohibits injured workers from pursuing a claim under Iowa law if they recover workers' compensation benefits under the laws of another state.* Iowa Code § 85.72(1). The mere filing of a claim in another state stays any Iowa claim. Iowa Code § 85.72(2). Consequently, at the time of his injury, Gardner had valid claims under both Iowa and Georgia law. Gardner understandably elected to pursue the Iowa claim, because of better benefits and because Heartland itself chose to administer the claim under Iowa law.[2] The subsequent divesting of his Iowa claim by the retroactive application of the 1997 amendment violated Gardner's substantive due process rights, regardless of whether he may or may not have had a valid claim for similar benefits under Georgia law.[3]

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[2] Whether Heartland was either insured or certified to be self-insured for workers' compensation purposes in the state of Georgia at the time of the injury cannot be determined for the record.

[3] Whether Gardner had a valid claim for workers' compensation benefits under Georgia law at the time of the 1997 amendment cannot be determined from the record.

CONCLUSION

For the reasons set forth above and in his initial Petition, Gardner contends he had a vested right in his claim for Iowa workers' compensation benefits. The Iowa legislature's subsequent amendment cannot be applied retrospectively to abolish his claim, and the Iowa supreme court's contrary decision results in a deprivation of Gardner's constitutional right of due process. Gardner respectfully requests this Court to grant his Petition for Writ of Certiorari, review the Iowa supreme court's decision, and reverse that decision, thereby restoring Gardner's workers' compensation benefits.

Respectfully submitted,

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